So now the President is likely going to bring in front of this body a trade agreement with Peru and a trade agreement with Panama. The President's U.S. Trade Representative, Susan Schwab, an honorable woman, straightforward, candid when you talk to her about this, she says: Yes, but now we have environmental and labor standards in these trade agreements.

But there are a couple of problems with that. First of all, we do not yet. We have not seen the text of the agreements. We have not seen, in fact, nor are we at all certain, that the labor and environmental standards will be inside the agreements; they may be side agreements. We tried that once with the North American Free Trade Agreements. The labor and environmental standards were outside the agreements. They were in a special side agreement, and they had virtually no impact. Where we had a trade surplus with Mexico when NAFTA was signed a decade and a half ago, now our trade deficit with Mexico is some $70 billion.

That same trade situation has exploded to a huge trade deficit with Canada also. So clearly we know in our communities how many plants have closed and companies have and jobs have moved to Mexico.

So the second thing we know about Jordan, about the trade agreements with Peru and Panama, the proposed agreements, is that the Secretary says they will enforce these labor and environmental standards as they unveil them, again not specific, not in writing yet.

The lesson again from this administration is when Congress, in the year 2000, passed the Jordan trade agreement, there were strong labor and environmental standards in that agreement. But when his U.S. Trade Representative, Mr. Zoelleck, assumed his position at USTR, Mr. Zoelleck sent a letter soon after to the Government of Jordan saying he was not going to, because of the dispute resolution, he was not going to enforce the labor and environmental standards.

Jordan has since pretty much become a country of sweatshops, where Bangladeshi workers, many workers imported from Bangladesh work at substandard wages and terrible conditions in sweatshop-like atmospheres and use Jordan as an export platform.

All of that tells me our trade policy simply is not working. If we are going to get serious about building the middle class—we spent a lot of time yesterday in Senator ENZI's committee, and Senator KENNEDY's committee, we passed legislation on higher education, the reauthorization of the Higher Education Act, passed bipartisanly. Senator ENZI showed great leadership, as did Senator KENNEDY and others. We need to do better to make education affordable for the middle class.

We need to do better with health care and better with prescription drug benefits. We need to continue to keep up with the minimum wage. We raised the minimum wage earlier this year. All of those things are important. But at the same time, two of the most important things that this body needs to do is to pass the Employee Free Choice Act to give the tens of millions of workers in this country who want to join a union the opportunity to organize and bargain collectively because it will mean higher wages and higher benefits. History absolutely proves that.

The other thing we need to do is to understand we need a very different trade policy, not more of the same, not Panama, not Peru, not Colombia, the way these agreements are written, not South Korea, the way that agreement is written, but agreements that serve the middle class, that lift up workers in the United States and lift up workers of our bilateral trading partners. Because we know that our trading policies will not be judged effective until the poorest workers in the poorest countries in the world are not just making products for Americans to use but that those workers are actually able to buy those products themselves.

We have seen that. Where we do trade right, we know it can work. We have clearly seen a trade policy that has failed. It is important, as this Congress looks at the trade agreements coming forward, Panama and Peru, and looks at trade promotion authority, legislation that may come in front of this body sometime this summer, that we keep our eye on looking at what has failed in trade policy and what has worked.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

EMPLOYEE FREE CHOICE ACT

Mr. ENZI. Madam President, I am fascinated to listen to some of these discussions to find out we can change the balance of trade if we took away the right of employees to decide by secret ballot if they do or do not wish to be represented by a union.

I also heard the argument, that pay and benefits would go up if we took away the Democratic right to a secret ballot. Fascinating. Fascinating. But, also, not true. You cannot take away rights from people in America and expect them to be happy about what is happening to them.

Now, I did see the Senator from Ohio in some national news broadcasts thanking one of the major unions for putting the Democrats in power; and, as a result, saying that they were willing to bring up this bill that would take away the right to a secret ballot. I don't think that is how things are supposed to work in America.

I began earlier and talked about several of the problems with taking away this right to a secret ballot under the Employee Free Choice Act—legislation that I believe should properly be called the Union Intimidation Act because that is exactly how it is going to work.

Previously I was discussing this myth rampant employer misconduct; and noted that contrary to these claims even allegations of misconduct have dropped significantly.

The truth is that the National Labor Relations Board scrupulously monitors the behavior of all parties during the entire period of a union-organizing campaign. Any misconduct by an employer that interferes with the employees' free choice in the election process is automatic grounds, automatic grounds, to set aside and rerun an election.

Now such misconduct not only includes any employer unfair labor practice, but it also includes even less serious transgressions, such as an employer's inadvertent failure to provide the union with the names and home addresses of all of its eligible employees in a timely manner.

Every word that is uttered and every act that takes place during a union organizing campaign is subject to National Labor Relations Board review and scrutiny. If a party's words or conduct, clearly including the commission of any unfair labor practice, in any way disturbs the ''laboratory conditions'' required for an election, the NLRB is empowered to set aside the election and require it to be rerun.

However, the fact is only about 1 percent of the National Labor Relations Board elections are rerun each year because of the misconduct of either employers or unions. So you notice I am not saying this is all one-sided, that there are two sides to it. There are some that are set aside because of union misconduct.

Now, just like the number of unfair labor practice charges, this figure, has been steadily declining as well. The secret ballot election and entire union election process is remarkably fair, heavily scrutinized and monitored and tightly regulated.

Where an employer acts improperly over the course of a union campaign and adversely affects the outcome of the election, the National Labor Relations Board has full authority to set aside that election and order it to be rerun.

In addition, in those instances where an employer engages in misconduct that has the effect of dissipating a union's card majority, the law already allows the National Labor Relations Board to certify the union and require the employer to recognize and bargain with that union. This has been the law for nearly 40 years. The claim that employers are increasing violating the law is totally inaccurate.

What unions and their supporters would like—indeed, what they hope—to accomplish by this legislation is to characterize any expression of opposition to unionization as misconduct and choke it off. Fortunately, however, we do not live in a totalitarian country. We live in a country that protects free speech and fosters the open debate of ideas. It is for those reasons, rooted in the Constitution and the Bill of Rights,

that current law does permit employers and employees that oppose unionization certain limited free speech rights. Even these, however, are strictly limited and closely monitored. The supporters of this bill, however, would seek to strip away even these limited democratic rights and to kill off any opportunity for free speech and open debate in the workplace. We cannot oppose totalitarian behavior abroad while sanctioning it in America's factories.

Thirdly, we are told that even if the law is not broken, even if fair elections are the norm, and even if employers do not violate the law as erroneously claimed, that union membership levels have been steadily declining and therefore the law must be changed. That is why they are trying to offer this early Christmas gift to union bosses. This is the only argument which proponents of this legislation have made that is at least based on fact. However, its fundamental premise is shockingly and radically wrong and represents a complete reversal of Federal labor policy.

It has never been and it should never be the role of the Federal Government to maintain or increase the level of unionization. That is a matter of free choice for individual employees, not a matter of Government mandate. The role of the Federal Government in private sector labor-management relations has wisely and for generations been one of neutrality. Our appropriate role has not been to guarantee unionization; it has been to guarantee free choice by employees. Our appropriate concern must always be the process, not the outcome.

When it comes to guaranteeing free choice and providing fair decisional processes, the history of government and society tell us unmistakably that the best means to achieve that end is through the use of a private, secret ballot. The proponents of this bill are not concerned about employee free choice at all. They are concerned solely with giving organized labor a way to stop their decades-long membership decline, the loss of membership dues money, and the loss of the political leverage such money buys.

This legislation is a transparent payback to organized labor—maybe not too transparent. I have been watching television, and that is exactly what has been said to the union leaders who came to DC. Catering to special interests is a disturbing enough phenomenon in Washington, but when the cost of such catering is the loss of employees' fundamental democratic right, the practice is just shameful.

I want to be sure all my colleagues know that the consequences of this bill's enactment would be far greater than merely increasing union membership. The bill the majority is asking us to consider today does more than take away Americans' right to vote on whether they want to join a union; it also upends the enforcement balance of the National Labor Relations Act and can destroy the ability of employers to control their workplace. In some cases, it also eliminates the ability of unionized employees to have a vote on accepting an employment contract.

The balance struck by the National Labor Relations Act drafters so many decades ago included a remedial system that is intended to make whole or repair any damage done by violations of the act. Instead, this bill will inject a tort-like system into workplace relations, and we all know how well the tort system works. Instead of encouraging speedy resolution of disputes before the National Labor Relations Board, this bill will drag them into the Federal court. The result will be a Federal court system even more clogged with litigation and delayed resolution of workplace disputes.

The bill also applies a stronger set of penalties, but only against employers. Even though unions face an annual average of almost 6,000 claims of harassment, intimidation, and coercion, it should come as no surprise that the bill's drafters see unfair labor practices as a one-sided affair.

The last part of the bill I would like to discuss is perhaps the part which worries me the most, and that is the imposition of mandatory binding interest arbitration. When employees decide to unionize, the first order of business is to negotiate a collective bargaining agreement with the employer. This agreement can cover every aspect of the workplace, including pay, hours, time off, working conditions, health and retirement benefits. Typically, a committee of union leaders negotiates with the employer, and once an agreement is reached, all of the unionized employees have the right to ratify the agreement. If they reject it, the union and employer go back to the negotiating table. Under this bill, these negotiations will be halted after a mere 90 days and a Government arbitrator will be called in to impose a contract on all parties. The workers would lose their right to ratify that agreement, the employer would have to comply with the terms of the contract even if it crippled the business plan, and the contract would be binding for 2 years.

This is a radical departure from the tradition of private sector collective bargaining in which parties to the contract, not some third party, make the terms of their own labor agreement. If this becomes the law of the land, we can expect the parties in labor negotiations to take radical positions to set themselves up for arbitration. This is because usually, the arbitration decision comes down in the middle of however far the parties are separated. So you have both parties taking radical stands, delaying until there is an arbitrator, and nobody having a part in the final say except the arbitrator. Again, while the current system encourages cooperation, this bill imposes conflict.

There is another side effect of this provision. Because a 2-year contract would be imposed on the parties, employees would lose the right to decertify or vote out the union for a period of at least 2 years. This would be the case even when they did not approve of the contract or where they originally signed union cards not knowing what they meant or even under pressure. I have no way of knowing whether this consequence was intended by the bill's drafters, but I can certainly guess.

Another little hidden gift to organized labor in this bill is that under this legislation, there would be no private ballot vote when a union was attempting to get into the workplace; however, a private ballot vote would be required to let the employees get out of the union. Seems like you ought to be able to just get 51 percent to sign the card, and it could be done the other way too. But no. That alone should make it clear that the only intended beneficiary of this bill is organized labor bosses and that its proponents could care less about a worker's democratic rights.

To put it simply, this bill is an attempt to rig the system, deny employers any opportunity to present their views on unionization, and prevent employees who may oppose unionization from speaking to coworkers. It would impose a union on employees based on unverifiable evidence of a majority, severely limit employees' ability to get out of a union once they are in, and stack the penalties against the employer. This may be the perfect recipe to end labor's decades-long losing streak, but the only winners will be union bosses and their political allies. Not American workers.

I have listened to the speeches over the last couple of days as this bill has been promoted as something essential. Again, I am fascinated that the Democratic Party wants to take away the democratic principle of the secret ballot. One mythical reason they mentioned is that a private ballot election supposedly stalls the process. The fact is, according to 2006 NLRB statistics, once a certification petition is filed, there is a median of 39 days to an election, and 94.2 percent of all elections are conducted within 56 days.

Another myth out there is that the private ballot election silences prounion workers. Here are the facts: All employees have a guaranteed right to discuss their support of unionization and to persuade coworkers to do likewise while at work. The only restriction is the reasonable one that they not neglect their own work or interfere with the work of others when doing so. Employees have the unlimited right to campaign in favor of unionization away from the workplace. For example, they, along with union organizers, can visit employees at their homes. In fact, the law requires that employers provide unions with a list of employee names and home addresses for just such a purpose.

Employee speech is virtually unregulated. In an effort to gain support for unionization of employees and unions, for that matter, they can promise, can

pressure, can provide financial incentives such as waiving union fees, and can spread false claims, distortions, and misrepresentations, all with no consequence. By contrast, the employer speech is strictly limited, closely monitored, and regulated. Employers cannot lawfully visit employees at their homes. Employers can't even invite an employee into certain areas of the workplace to talk about unionization. Employers cannot promise and cannot make any statement that could be construed as threatening, intimidating, or coercive. Such behavior is strictly unlawful for the employer.

The other side says the Employee Free Choice Act, which I call the Union Intimidation Act, allows workers to have an election if they want one. We just heard that argument. The fact is, we have a body around here—a couple hundred researchers at the Library of Congress—that does research in a nonpartisan manner. They look at the facts and pass them on to us. They were asked about employees being able to have an election if they want one under this bill. The Congressional Research Service disagrees with their supposition. They read the bill's words that say ''the board shall not direct an election'' the way most reasonable people would read them. In a memo to me which was entered into the Health, Education, Labor and Pensions Committee hearing record, CRS wrote:

An election would be unavailable once the board concludes that a majority of the employees in an appropriate unit has signed valid authorizations designating an individual or labor organization as its bargaining representative.

The Democrats' own witness at the HELP Committee hearing in March admits that it is not true that any one employee who prefers to vote by secret ballot election can secure such an election. That is their own witness saying: Not true. It was Professor Estlund who said that in response to a question for the record.

Essentially, private ballot elections will only take place under H.R. 800 if the union chooses to have one by submitting authorization cards from less than 50 percent of the workers. As a practical matter, that will never happen. If union organizers cannot get enough cards in a public, coercive, intimidating signing campaign, they just don't bother with an election.

Another myth: The Employee Free Choice Act, which I call the Union Intimidation Act, would increase health care and pension benefits. We heard that a few minutes ago. Wishing or asking doesn't make it so. Health insurance, like higher wages and benefits, cost money. Unions don't have to contribute a single penny toward those costs. In fact, since unionized operations are less efficient, they make paying for those things more difficult. They don't take into consideration the business plan and how to continue the business.

Comparing union wages versus nonunion wages nationwide is also inherently misleading since union workers are concentrated in geographic areas and industries where the wages and benefits of all workers are generally higher.

Another myth: Workers seeking to form unions are routinely fired; one in five is fired; one in five is fired every 20 minutes.

OK. Let's look at the facts on that. To begin with, under current law, it is illegal to terminate or discriminate in any way against an employee for their union activities. If this occurs during an organizing campaign, the National Labor Relations Board not only remedies the violation, it is also empowered to set aside and rerun the election since the necessary ''laboratory conditions'' for a valid NLRB election have not been met. However, that occurs in less than 1 percent of all elections, and that number has been steadily decreasing.

That is not the end of the NLRB's authority under current law. If the National Labor Relations Board finds a fair election is not possible, they can certify the union regardless of the vote and order the employer to bargain.

Yesterday, we heard this same myth repeated, and it is based on three phony analyses by stridently prounion researchers, who often make a series of wholly unfounded assumptions and routinely misuse statistical data.

The first analysis arrives at its conclusions by taking the number of National Labor Relations Board reinstatements offered each year, assuming that half occur in the context of an organizing campaign, and then dividing that number into some completely mythical and arbitrary number of ''union supporters''. Now, even if the first assumption was right, it is the number of supporters that matters. The lower the number, the more dramatic it looks. This number, however, is completely made up. There is no factual basis for determining this number.

Here are the facts. In 2004, for example, nearly 150,000 employees were eligible voters in National Labor Relations Board elections. Using their assumptions, there were only about 1,000 reinstatement offers that year. That is not 1 in 5; that is 1 in 150. Even that is likely very high since the vast majority of these offers are settlements which do not account for the fact that many of these terminations may have been perfectly lawful. Moreover, since unions won over 61 percent of these elections, their supporters amounted to at least 90,000.

Now, the second ''analysis'' uses the National Labor Relations Board's backpay figures as the basis for this claim. Here is the problem. The vast majority of those backpay claims do not arise in the context of an organizing campaign. They do not involve union employee terminations. And they do not single out union supporters. Most involve bargaining violations with already-established unions. In 2000, for example, two-thirds of the backpay number involved a single case that had absolutely nothing to do with an organizing campaign.

The third study consisted of stridently prounion researchers calling union organizers about campaigns they conducted over a short period of time in an isolated geographic area. The ''statistics'' relied on were nothing more than untested anecdotes.

So as this discussion continues, we are not going to allow incorrect and distorted numbers, and misused and misinterpreted data to obscure what is really at issue here. This is about taking away the right for people to have a secret ballot. Again, I want to reiterate that while this bill may be grossly misnamed as the Employee Free Choice Act, it has absolutely nothing to do with preserving free choice. In fact, it's just the opposite. How would you like to have someone come into your house with two or three people—one of them being very big—and pressuring you to sign a union card? Would you feel a little intimidated? Most people certainly would. Would you sign because you felt pressured, because you just wanted to have people stop bothering you, or because you didn't want to offend a coworker or friend? Most people would. However, under this bill all a union would have to do is obtain 51 percent this way and it is automatic.

Once the total reaches 50 percent, there is no latitude. These claims that employees could still have an election under this bill are simply not true. Oh, yes, there is this extraordinarily deceptive claim that a union could stop at 49 percent and ask for an election. That is simply nonsense. Why would a union ever do that. More importantly, how could employees make the union stop under 50 percent. They can't. And the unions certainly won't stop—with one percent more they have guaranteed members, and guaranteed dues. Do you really think they'd risk that in a secret ballot where someone who signed under pressure would have the right to change their mind and vote their real beliefs? Why would a union ever do that? Guaranteed union members and guaranteed dues. Do you really think union organizers would actually risk that by giving employees a truly free choice? I do not think so.

It is a fundamental democratic principle to have a secret ballot. The proponents of this legislation would do exactly the opposite and strip away from working men and women this most fundamental democratic right. The proponents of this bill ought to change the name of their party if they continue to advocate this legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

THANKING STAFF

Mr. BINGAMAN. Madam President, last night the Senate worked late to produce an energy bill. I believe it is a good bill. It does not contain all I had